



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/09/06	Bill No:	AB 2621
Tax:	Sales and Use	Author:	Strickland
Related Bills:			

### BILL SUMMARY

This bill would provide a sales and use tax exemption for sales of gasoline.

#### Summary of Amendments

Since the previous analysis, this bill was amended to provide a sales and use tax exemption for gasoline, as defined. The previous version of the bill would have excluded from the sales and use tax any federal and state excise taxes included in the selling price of gasoline, diesel fuel, and aircraft jet fuel.

### ANALYSIS

#### Current Law

Existing law imposes a sales or use tax on the gross receipts from the sale of, or the storage, use, or other consumption of, tangible personal property, unless specifically exempted by statute. Under existing law, sales of gasoline are subject to sales or use tax.

In general, Revenue and Taxation Code section (Section) 6357 provides a sales and use tax exemption for the sale of motor vehicle fuel used in propelling aircraft, except aircraft jet fuel.

Under existing law, Section 6385 provides a sales tax exemption for that portion of the sale of fuel and petroleum products sold to a water common carrier that remains on board after the water common carrier reaches its first out-of-state destination.

With respect to air common carriers, Section 6357.5 provides an exemption for the sale or purchase of fuel and petroleum products sold to air common carriers when the fuel and petroleum products are for immediate consumption or shipment in the conduct of the air carrier's business on an international flight.

#### Proposed Law

This bill would add Section 6353.5 to the Sales and Use Tax Law to provide a sales and use tax exemption for sales of motor vehicle fuel as defined in Section 7304.

The provisions of the bill would become operative on the first day of the first calendar quarter more than 90 days after the effective date of the bill.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

### Background

Senate Bill 325 (Ch. 1400, 1971) made possible the imposition of state sales and use tax on sales of gasoline, in exchange for a reduction in the basic state tax rate, from 4 percent to 3  $\frac{3}{4}$  percent, without a corresponding loss in revenue. In addition, to taxing gasoline, SB 325 also provided that the federal and state imposed excise taxes on gasoline are subject to the sales and use tax.

### COMMENTS

1. **Sponsor and Purpose.** According to Assembly Member Strickland's office, who is also the sponsor of the bill, this measure is intended to help lower gasoline prices by reducing the sales tax on gasoline and provide consumers relief from the current high retail prices of gasoline.
2. **The May 9, 2006 amendments** provide a sales and use tax exemption for sales of gasoline instead of the previous exclusion from the taxable measure of the excise taxes imposed on fuels. The amendments also provide for a delayed operative date so that the Board and affected retailers can implement the sales tax exemption.
3. **The bill should be amended to reference the correct section of the gasoline tax law.** The appropriate section that defines motor vehicle fuel is Section 7326, not the Section 7304 that is referenced in this bill. Assembly Bill 2114 (Ch. 1053, Stats. 2000), which became operative January 1, 2002, eliminated the Motor Vehicle Fuel License Tax Law and replaced it with the Motor Vehicle Fuel Tax Law.
4. **Consumers may not realize tax savings.** Gasoline is generally sold at a "tax included" price. Therefore, when a retailer sells gasoline for \$3.34 per gallon, that price includes the sales tax. If the proposed exemption were to become law, the retailer might take advantage of the tax savings and not change the prices at the pump paid by consumers.
5. **Transportation funding would be reduced.** The revenue from the sales tax on gasoline is primarily used to fund the Traffic Congestion Relief Fund (TCRF) and the Transportation Investment Fund (TIF). Assembly Bill 2928 (Ch. 91, Stats. 2000) established both of these funds with the enactment of the Traffic Congestion Relief Program (TCRP). According to the Legislative Analyst's Office, the funding for the TCRP extends through the fiscal year 2007-08. Voters passed Proposition 42 in 2002, which ensured a dedicated funding source to the TIF by permanently extending the transfer of gasoline sales tax revenues. The revenues transferred to these funds are used to pay for various transportation projects in the state, such as road improvements, road maintenance, and mass transit projects. Creating an exemption for sales of gasoline would eliminate the revenues that would normally be appropriated to these funds.
6. **Motor vehicle fuel** as defined in Section 7326 of the Motor Vehicle Fuel Tax Law includes gasoline and aviation gasoline. As mentioned previously, sales of gasoline used to propel aircraft are already exempt.

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## COST ESTIMATE

The Board anticipates there will be startup costs related to the recalculation of the advance payments to local jurisdictions. These costs would be borne by local jurisdictions pursuant to Section 7204.3. Additional costs would be incurred in notifying affected retailers, answering inquiries, and revising returns. A detailed estimate of the workload is pending.

## REVENUE ESTIMATE

### Background, Methodology, and Assumptions

Existing law imposes a sales or use tax on the gross receipts from the sale of, or the storage, use, or other consumption of, tangible personal property, unless specifically exempted by statute. Under existing law, sales of gasoline are subject to sales or use tax. Currently both the federal and state excise taxes on gasoline are subject to the sales and use tax.

Consumption of gasoline in California is estimated to be 16 billion gallons annually. The current spot price in Los Angeles as of May 2, 2006 for reformulated regular gasoline is \$2.97 per gallon. The taxable measure of gasoline sales would be \$47.5 billion.

Gasoline	16,000,000,000	gallons
LA Spot price	\$2.97	5/2/2006
Taxable Measure	\$47,520,000,000	
Tax Rate	7.93%	
Revenue loss	\$ 3,768,336,000	Annualized

### Revenue Summary

The revenue loss from exempting the \$47.5 billion from the sales and use tax would be as follows:

#### Revenue Effect

State loss (5%)	\$2.376 billion
Fiscal Recovery Fund (0.25%)	0.119 billion
Local loss (2%)	0.950 billion
District loss (0.68%)	0.323 billion
<b>Total</b>	<b>\$3.768 billion</b>

Analysis prepared by:	John Cortez	916-445-6662	05/12/06
Revenue estimate by:	Bill Benson, Jr.	916-323-2005	
Contact:	Margaret S. Shedd	916-322-2376	
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